

Agenda Report for Decision

Meeting Date: 24 March 2022

Item Name	Heritage Sub-Committee – Reappointment of Members
Presenters	Nadia Gencarelli and Jason Bailey
Purpose of Report	Decision
Item Number	4.2
Strategic Plan Reference	N/A
Work Plan Reference	N/A
Confidentiality	Not Confidential (Release Delayed). To be released following final appointment of the Heritage Sub-Committee members
Related Decisions	<ul style="list-style-type: none"> • 5 December 2019 – Item 4.4 – Formation of a specialist Heritage Sub-Committee for providing advice to the Minister on Heritage DPAs • 30 January 2020 – Item 4.2 – Appointment of specialist Heritage Sub-Committee membership

Recommendation

It is recommended that the State Planning Commission (the Commission) resolves to:

1. Approve the designation of this item as Not Confidential (Release Delayed). To be released following final appointment of the Heritage Sub-Committee (the Sub-Committee) members.
2. Agree to the Attorney-General's Department (the Department) drafting updated Terms of Reference for the Sub-Committee to reflect the Code Amendment process, following direction from the Commission on the intended process.
3. Authorise the Chair of the Commission to approve the updated Terms of Reference for the Sub-Committee, and write to the Minister for Planning and Local Government (the Minister) seeking approval of the updated Terms of Reference.
4. Subject to the Minister's approval being received, agree to reappoint the following members to the Sub-Committee:
 - Bruce Harry
 - Deborah Lindsay
 - Ron Danvers
 - Elizabeth Little
 - Jenny Newman

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- Representatives of Heritage SA, within the Department for Environment and Water (DEW).
5. Subject to Sub-Committee members' prior verbal agreement, authorise the Chair to write to the members advising of their reappointment.
 6. Identify and appoint member(s) of the Commission to the Sub-Committee, including a Chair.

Background

On 5 December 2019, the Commission resolved to seek the former Minister's approval to establish a Heritage Sub-Committee for the purposes of providing advice to the Commission and the Minister on proposed Local Heritage Development Plan Amendments (DPAs) that proposed listing of new local heritage places. On 9 January 2020, the former Minister endorsed the request for the establishment of the Sub-Committee and the Terms of Reference for the Sub-Committee, and the following members were appointed on 2 April 2020:

Chair	
Allan Holmes	• (Former) Member of the State Planning Commission
Members	
Craig Holden	• Member (now Chair) of the State Planning Commission
Bruce Harry	• Architect and heritage consultant (Bruce Harry & Associates) • Former member of Local Heritage Advisory Committee (LHAC)
Deborah Lindsay	• Senior Heritage Consultant (DASH Architects), Acting member of SA Heritage Council • Former member of LHAC
Ron Danvers	• Heritage architect (semi-retired)
Elizabeth Little	• Senior Heritage Architect (Grieve Gillet Andersen) • Former member of LHAC
Jenny Newman	• Architect (GHDWoodhead) • Accredited Professional • Former Development Policy Advisory Committee (Inner Metropolitan Development Assessment Committee) member
Representatives of Heritage SA, DEW	<ul style="list-style-type: none"> • Hamish Angus, Senior Heritage Policy Officer <ul style="list-style-type: none"> ○ Bachelor of Architecture ○ Former member of LHAC • Michael Queale, Senior Heritage Conservation Architect <ul style="list-style-type: none"> ○ Bachelor of Architecture • Anna Pope, Program Manager, Assessment and Maritime <ul style="list-style-type: none"> ○ Bachelor of Architectural History (Hons) • Dr Louise Bird, Heritage Officer <ul style="list-style-type: none"> ○ PhD in Architecture

A copy of the existing Terms of Reference for this Sub-Committee are provided at **Attachment 1**. It is considered that there is a role for the Sub-Committee in providing advice to the Commission (who will then provide advice to the Minister) on heritage Code Amendments; however, the term of the existing Sub-Committee is due to lapse on 31 March 2022.

Discussion

Under the old planning system, the Minister was required to seek the Commission's expert advice on proposals to list new Local Heritage Places (via a DPA) where an owner objected to the listing as part of the public consultation stage. In addition, the Minister had the ability to request advice on proposed heritage listings in instances where owner objections were not received; this was common practice where there were concerns about the level of justification provided or other strategic considerations in play. The Sub-Committee provided expert heritage advice to inform the Commission's response to the Minister, with a specific focus on whether the proposed Local Heritage Places met the legislated criteria (i.e. warranted heritage listing).

Under the new system, the listing of Local Heritage Places occurs through the Code Amendment process, with each place required to meet the same legislated criteria as those applicable in the old system (**Attachment 2**). The *Planning, Development and Infrastructure Act 2016* (the Act) does not specifically require expert consideration of proposed local heritage listings by the Commission. However, the Minister must seek the advice of the Commission on Proposals to Initiate a Code Amendment, and it is recommended that the Commission utilise the Heritage Sub-Committee in order to gain expert heritage advice on proposals to initiate heritage Code Amendments.

In addition to this, the Sub-Committee could also play a role in providing advice to the Commission and Minister in the latter stages of the Code Amendment process – for example, where a Minister determines to refer a Code Amendment to the Commission prior to making a final decision on whether to adopt or alter the proposal, or determine that it should not proceed. In such instances, the Sub-Committee could provide expert heritage advice on the merits of each proposed Local Heritage Place (i.e. an assessment against the legislated local heritage criteria), and may also choose to hear submissions from councils and affected property owners.

It is recommended that the Commission propose to the Minister that all heritage Code Amendments be referred as a standard procedural step. This proposal can be set out in updated Terms of Reference to be put to the Minister for approval. It should also be noted that there is no statutory mechanism for the Sub-Committee to hear from landowners or councils when a Code Amendment is referred by the Minister; as such, the Commission may wish to identify this as part of updated Terms of Reference.

To ensure continuity of understanding and consideration of heritage matters, it is recommended that the Commission reappoint the current members of the Sub-Committee with the exception of Mr Allan Holmes, whom is no longer a member of the Commission. It is recommended that the Commission appoint one or more of its members and, in doing so, identify a Chairperson for the Sub-Committee. In doing so, the Commission should note that advice from the Department of the Premier and Cabinet is that Commission members are not eligible for additional remuneration associated with participation on the Heritage Sub-Committee. Alternatively, the Commission may prefer to not appoint one of its members as a means of demonstrating additional independence.

It is noted that a Proposal to Initiate a Local Heritage Code Amendment has been lodged by the City of Norwood Payneham and St Peters, and the Department is aware of several other councils working to lodge Proposals to Initiate over the coming months. It is therefore recommended that the Sub-Committee be reappointed over the coming weeks to ensure the Code Amendments can be processed expediently.

If agreed, the following steps are recommended:

- Finalise the Terms of Reference to reflect the new Code Amendment process.
- Write to the Minister seeking approval of the amended Terms of Reference for the Sub-Committee, as well as approval of remuneration arrangements for members.
- Confirm whether existing members wish to continue on the Sub-Committee, and if so, write to confirm their reappointment

Separate to this, it should also be noted that the Department is currently working to improve and promote heritage processes in the system, and is working to update the following:

- Heritage in Transition Practitioner Guide – assists in assessing places against the Local Heritage criteria and will be updated to reflect Code Amendments.
- Historic Area Overlay Design Advisory Guidelines.
- Character Area Overlay Design Advisory Guidelines.
- Style Identification Advisory Guidelines.

Attachments:

1. Current Terms of Reference (#18472931).
2. Local Heritage Criteria (#18460325).

Prepared by: Nadia Gencarelli

Endorsed by: Jason Bailey

Date: 18 March 2022

Heritage Sub Committee –Terms of Reference

Purpose

The purpose of the Heritage Sub Committee (the Sub Committee) is to, as required by the State Planning Commission (the Commission):

1. under the *Development Act 1993* (D Act)(until the repeal of this Act):
 - a. provide advice to the Commission relating to the listing of local heritage places at the Statements of Intent (SOIs) and consultation approval stages; and
 - b. pursuant to section 25 (15)(B) of the *Development Act*, hear and consider objectors and provide advice on how to proceed with that listing.
2. under the *Planning, Development and Infrastructure Act 2016* (PDI Act):
 - a. hear and consider objectors to the listing of local heritage places and provide advice on how to proceed with that listing as prescribed in Practice Direction 2- Preparation and Amendment to the Designated Instrument.
 - b. provide advice on heritage matters as requested by the Commission.
3. In relation to the listing of local heritage places the provision of advice is limited to the:
 - a. local heritage criteria (and whether further information may justify) in the context of themes of activities and historical forces.
 - b. whether the building is structurally unsound, has public safety issues or is irredeemably beyond repair.
 - c. whether the extent of listing is clear and accurately described.
 - d. whether the property details are correctly and accurately recorded.

Delegated functions

The Sub Committee will hear objectors to heritage listings on behalf of the Commission.

Principles

The Sub Committee will operate consistently with the principles summarised here:

- Act lawfully;
- Act impartially;
- Remain open, acting with integrity and providing frank and fearless advice;
- Work with purpose and alignment to achieve quality outcomes and the delivery of results;
- Maintain the confidence of the Commission, Government, Parliament and the community;
- Maintain appropriate confidentiality of Sub Committee discussion.

Membership

Membership is limited to no more than eight persons.

One member will be appointed by the Commission as Chair, and one member will be appointed as Deputy Chair. The Chair will be a member of the Commission.

Members will be appointed for a term not exceeding two years, and on conditions determined by the Commission. On the expiration of this term, members may be eligible for reappointment as determined by the Commission.

Membership must, as far as practicable, comprise equal numbers of women and men.

In making appointments to the Sub Committee, the Commission should consider that the members collectively have qualifications, knowledge and expertise in the following areas:

- Experienced historian
- Experienced heritage architect
- Urban / Regional planner with heritage listing experience

Remuneration

Sessional fees will be paid to the Sub Committee members in line with the determination of the Chief Executive, Department of the Premier and Cabinet in accordance with Department of the Premier and Cabinet Circular PC016 – Remuneration for Government Appointed Part-Time Boards and Committees (September 2016), and the Boards and Committees – Remuneration Framework (Approved by Cabinet on 10 December 2007).

Appointment of Panels from Sub-Committee

To assist in the exercise of its purposes, it is intended that the Sub-Committee will undertake its tasks through the convening of Panels by the Commission comprising selected Sub-Committee members.

Each Panel shall comprise:

- the Chair (or Deputy Chair); and
- at least two members of the Sub Committee selected by the Commission.

The Panel is empowered to undertake all functions in relation to a matter assigned to it by the Commission that the Sub-Committee could itself do.

Roles and Responsibilities

The Commission will be responsible for instructing the Sub Committee on its activities.

Chair

The primary role and function of the Chair is to lead and manage the processes and practices of the Sub Committee, and to ensure the effective delivery of the Sub Committee's functions.

The Chair will also act as the primary conduit between the Sub Committee and Commission to communicate key messages from the Sub Committee to the Commission and vice versa.

Support

The Department of Planning, Transport and Infrastructure (the Department) will support the Sub Committee in accordance with a Service Level Agreement between the State Planning Commission and the Department. A Governance Officer shall be assigned from the Governance Unit to support the Sub Committee. The Governance

Officer will ensure agendas, minutes, an actions register, and any other relevant documentation is prepared and distributed.

The DPA/Code Amendment Team within Planning and Land Use Services (PLUS) division of the Department will provide advice in relation to heritage policy and Development Plan Amendment/Code Amendment issues, following a request for advice by the Commission.

Conflict of Interest

Members must, within 60 days of appointment, submit a Primary Return identifying any financial or other interests. The register records the member's main business activities, involvement with other business organisations, vendors, business interests and other associations that might produce a conflict of interest.

Members must, within 60 days of 30 June annually, submit an Ordinary Return identifying any financial or other interests.

Members must also submit a DPTI Pecuniary Interest declaration at the end of each financial year to identify the nature of a transaction entered into by DPTI with any Board/Committee member or with any firm, trust or company in which a Board/Committee member has either a direct or indirect financial interest.

Members must, as soon as s/he becomes aware of an actual or potential conflict of interest, or the potential for a perceived conflict of interest, disclose the nature and extent of the interest to the Chair of the Sub Committee.

If a member declares a conflict of interest, that member must not take part in any discussion or decision on the matter and must be absent from the meeting when any deliberations are taking place or a decision is being made.

If a conflict of interest has been declared by a member, the general nature of the interest must be recorded in the minutes.

Independent Commission Against Corruption

In accordance with the Directions and Guidelines published by the Independent Commissioner Against Corruption (ICAC), Sub Committee Members are classified as 'public officers' because they are:

'A person to whom a function or power of a public authority or a public officer is delegated in accordance with an Act.'

In accordance with the Commissioner's Directions and Guidelines all 'public officers' have an obligation to report a matter that is reasonably suspected of involving corruption, misconduct or maladministration in public administration to the Office for Public Integrity (OPI). The process for reporting such a matter to the OPI is outlined in the Directions and Guidelines document and on the ICAC website at www.icac.sa.gov.au.

Public Interest Disclosure Act 2018

The new *Public Interest Disclosure Act 2018* commenced on 1 July 2019. This law strengthens accountability in government and ensures public officers who make a disclosure are protected.

Confidentiality

Members must ensure that any confidential information remains confidential and is not disclosed improperly to others.

Members must refer all enquiries from all external parties (including media) directly to the Governance Officer for action.

Meetings and Proceedings (Sub-Committee and Panels)

Meeting schedule

The meeting schedule will depend on timing of the lodgement of the item being considered. Members will be given at least a fortnights notice of a future meeting.

Agenda and meeting papers

An agenda and any associated meeting papers for prior reading will be distributed by the Governance Officer five working days prior to the meeting.

As the agendas are for the purposes of Minister for Planning's advice, they will remain confidential until the completion of the ERDC consideration.

Proceedings

The Chair will preside over meetings of the Sub Committee and to those Panels to which he or she is presiding. The Deputy Chair will preside over meetings if the Chair is absent, and will chair those Panels to which he or she is presiding. In the absence of both the Chair and the Deputy Chair, another member of the Sub Committee will be chosen by those members present to chair the meeting.

A quorum of the Sub Committee consists of a number ascertained by dividing the total number of appointed Members by half, ignoring any fraction resulting from the division, and adding one (and no business may be transacted at a meeting of the Sub Committee unless a quorum is present).

For Panel meetings, the quorum is three members (and no business may be transacted at a meeting of a Panel unless a quorum is present).

The Chair/Deputy Chair will facilitate the meeting in a manner which promotes healthy, orderly, constructive, respectful and expeditious discussion and not allow repetitious or irrelevant discussion having regard to the function of the Sub Committee and/or Panel.

Each Member has one vote, and the Chair/Deputy Chair has a casting vote, if required to address an even vote.

Decisions of the Sub Committee or Panel are carried by the majority of votes cast. The minutes shall only record the decision and not the votes for or against, as these are irrelevant once the majority is determined.

If required, Sub Committee or Panel business may be conducted 'out-of-session' by electronic correspondence between the Governance Officer on behalf of the Chair/Deputy Chair and the Sub Committee or Panel Members (as the case may be).

Proxy

Proxy Members will not be appointed. Members are encouraged to attend via Skype or teleconference facilities if they are not available to attend in person, otherwise an apology is to be tendered.

Minutes

The Governance Officer will minute the meeting. The minutes will be concise and record:

- the names of Members present;
- apologies received from Members;
- the names of departmental staff in attendance;
- any disclosure of interest or conflicts made by a Member or departmental staff;

- the resolution (which may include a brief summary of how the Sub Committee or Panel reached its decision if deemed necessary).

Discussion and actions will not be recorded in the minutes. A separate actions register maintained by the Governance Officer will document any actions to be undertaken.

The minutes of the meeting will be confirmed at the end of each meeting by those members present.

The minutes will be included in the agenda of the next State Planning Commission meeting for noting.

Minutes will remain confidential as the advice is for the Minister for Planning's consideration in decision making.

Attendance of outside parties / general public

Objectors are permitted to bring experts to support their provision of evidence to the Sub Committee or Panel.

If a party has made a written submission to a forthcoming agenda item which has been put out for public comment that party may also be invited to attend for that particular item.

Sub Committee and Panel meetings are not open to members of the general public or media.

The Sub Committee or Panel will invite the Council (DPAs)/Designated Entities (Code Amendments) and its consultants an opportunities to provide a verbal response to verbal submissions.

Advice to the Commission

The Chair/Deputy Chair, as soon as practical after finalisation of the Sub Committee's (or Panel's) report, will present the Sub Committee's or Panel's findings to the Commission.

Review

These Terms of Reference shall be reviewed by the Sub Committee Chair in consultation with the State Planning Commission following the appointment of a new Sub Committee Chair or every two years (whichever occurs first).

Adopted by the State Planning Commission on 5 December 2019



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Date: 17/1 /2020
Michael Lennon, Chair, State Planning Commission

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Date: / /2020
Chair, Heritage Sub Committee

Legislated Local Heritage Criteria – Planning, Development and Infrastructure Act 2016

67—Local heritage

- (1) *The Planning and Design Code may designate a place as a place of local heritage value if—*
- (a) it displays historical, economic or social themes that are of importance to the local area;*
or
 - (b) it represents customs or ways of life that are characteristic of the local area; or*
 - (c) it has played an important part in the lives of local residents; or*
 - (d) it displays aesthetic merit, design characteristics or construction techniques of significance to the local area; or*
 - (e) it is associated with a notable local personality or event; or*
 - (f) it is a notable landmark in the area; or*
 - (g) in the case of a tree (without limiting a preceding paragraph)—it is of special historical or social significance or importance within the local area.*